

INTRODUCTION: BACKGROUND INFORMATION

2. FIDUCIARY RESPONSIBILITY

What Is A "Fiduciary"?

Fiduciary is a term encompassing a variety of relationships in which one party has to act for the benefit of another. There are many different types of fiduciary relationships including attorney and client, agent and principal, and partners in a partnership.

Members of the State Investment Board are considered fiduciaries for the trust funds they invest and manage.

Fiduciary Responsibilities

The following paragraphs briefly discuss the fiduciaries' responsibilities and liabilities:

1. **Duty to use the appropriate standard of care.** This duty would include the duty to invest in accordance with the prudent person rule, to exercise care, skill and caution. This duty is also reflected in RCW 43.33A, which sets out the standard of care for investments.
2. **Duty of loyalty.** Board members may not use their position for personal gain or self-dealing. Board members may not receive financial benefit from their positions as trustees.

Board members are subject to the restrictions and prohibitions in RCW 42.18, the Executive Conflict of Interest Act. This act, among other things, prohibits a person from using his or her position with the state for personal gain or self-dealing. This act also prohibits non-voting members from receiving financial benefit by virtue of their position on the Board.

3. **Duty to diversify.** This duty is part of the duty to preserve the trust property and make it productive. This duty is described in RCW 43.84.150 which gives the Board authority to invest and also establishes certain parameters for these investments, including the duty to diversify. This statute applies to the entire Board and does not exempt non-voting members.

In giving an opinion and advice to the voting members, non-voting members must remember they are also bound by the same general fiduciary responsibilities as applicable to the voting members of the board.

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Investment Principles Of The Board

The two general investment principles which guide the Board are briefly described below:

Prudent Person

The law gives the Board very broad authority to invest retirement and other funds with very few limitations except to act as a "prudent person" would act.

The term "prudent person" is well-defined in common and case law. It simply means that if the courts are asked to judge the actions of the Board, they can rely on simple common sense. Did the Board act intelligently and responsibly? When they decided on investments did they try to understand the risks? The probable outcome? Or were they careless and did they speculate with the trust funds? These are simple non-scientific questions that would help the courts decide whether Board members were acting as "prudent persons" or not.

Another test a court may use is to decide whether other persons of intelligence would have acted in a similar manner under similar circumstances. Again, the test of common sense must be brought to bear on the actions of fiduciaries.

If the Board members do not act as "prudent persons" they may be held personally liable for damages by the courts.

Exclusive Benefit

Another principle often cited is the "exclusive benefit" rule. This means that the Board members are legally obligated to act for the exclusive benefit of the fund beneficiaries. No other objective is acceptable or legally defensible.

References:

RCW 42:18, Executive Branch Conflict of Interest Act

Appendix A